

Appl. No. 10/821,357

REMARKS

The Examiner is requested and instructed to NOT enter the previously filed, un-entered response mailed November 29, 2008.

Claims 17-36 remain in this application, wherein claims 17, 20 and 36 are independent; claims 17 and 20 are amended; and claims 34-36 are hereby added. The added claims are within the group of device claims elected in response to a previous restriction requirement, and are supported by the detailed description, figures and claims as originally filed, no new matter is being added, and entry of the added claims is respectfully requested.

In particular, amendments to claim 17 and added claim 35 are supported by the specification at page 3, lines 1-2; amendments to claim 20 and added claims 34 and 36 are supported by the specification at page 5, lines 10-19.

Claim Rejections – 35 U.S.C. § 103(a):

Claims 17, 19-25, and 31-32 stand rejected under 35 USC 103 as allegedly being unpatentable over Pahl et al (hereinafter PAHL) in view of Tsuzuki et al (hereinafter TSUZUKI).

Claims 18, 26-28, and 33 stand rejected under 35 USC 103 as allegedly being unpatentable over PAHL in view of TSUZUKI further in view of Onishi et al (hereinafter ONISHI).

Claims 29 stands rejected under 35 USC 103 as allegedly being unpatentable over PAHL in view of TSUZUKI further in view of Bashir et al (hereinafter BASHIR).

Claims 30 stands rejected under 35 USC 103 as allegedly being unpatentable over PAHL in view of TSUZUKI further in view of Orcutt et al (hereinafter ORCUTT).

To establish a case of *prima facie* obviousness of a claimed invention, all claim features must be taught or suggested by the prior art. *In re Royka*, 490 F.2d. 981, 180 USPQ 580 (CCPA 1974); MPEP 2143.03.

These rejections are traversed.

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As amended independent claim 17 includes the feature that the lithographically-formed structure forms "a sealed pocket above the active area filled with a target gas."

Independent claim 20 as amended includes the feature that the "seal coating induces a strain in a substrate on which the SAW device is fabricated."

Applicants submit that the cited references, alone or in combination, do not teach or suggest either: (i) a sealed pocket above the active area filled with a target gas; or (ii) wherein the seal coating induces a strain in a substrate on which the SAW device is fabricated.

Accordingly, applicants request the Examiner withdraw the finality of the rejection, and allow claims 17-20 as amended, and claims dependent therefrom.

Added Claims 34-36

Added claims 34 and 35 depend from independent claims 17 and 20, respectively and are allowable for at least the reasons given above with respect to those claims. In addition, added claims 34-36 each include at least one of the added features of amended claims 17 and 20, i.e., a pocket filled with a target gas or seal coating induces a strain in a substrate on which the SAW device is fabricated, not taught or suggested by the cited references. Accordingly, Applicants submit these claims are patentable over the cited references for at least the reasons given above with respect to claims 17 and 20.

Accordingly, applicants request the Examiner withdraw the finality of the rejection, and allow claims 17-36 as presented.

RESERVATION OF RIGHTS

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant's silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided

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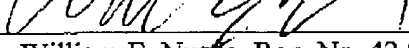
under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record is relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Payment is enclosed for the petition and request for continued examination (RCE). It is believed no additional fees are required for filing this amendment; however, the Commissioner is authorized to charge any additional fees which may be required, including fees for extensions of time, to William E. Nuttle, Deposit Account No. 50-3467.

Respectfully submitted,
Gregory D. Miller, et al.

Dated: January 9, 2009

By: 
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